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Background Information and Technical Support Document for Proposed Amendments to:

310 CMR 7.70

"Massachusetts CO_2 Budget Trading Program"

DRAFT FOR INTERNAL MASSDEP DELIBERATION ONLY

Regulatory Authority

M.G.L. c. 111, sections 142A-N and M.G.L. c. 21A, § 22

March 2018

Contents

I. SUMMARY

The Massachusetts Department of Environmental Protection (MassDEP) is proposing to amend regulation 310 CMR 7.70 - The Massachusetts CO_2 Budget Trading Program. This existing regulation is MassDEP's regulation to implement the Regional Greenhouse Gas Initiative (RGGI) in the Commonwealth. These amendments would implement program changes agreed to by the nine RGGI participating states after completing the 2016 Program Review. The proposed amendments strengthen the RGGI program, make it more effective, and establish the regional cap through 2030.

RGGI is a cooperative effort among the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont to cap and reduce power sector CO_2 emissions. RGGI is composed of individual CO_2 Budget Trading Programs in each participating state. Through independent regulations, based on the RGGI Model Rule, each state's CO_2 Budget Trading Program limits emissions of CO_2 from applicable electric power plants, issues CO_2 allowances, and requires participation in regional CO_2 allowance auctions. A CO_2 allowance represents a limited authorization to emit one short ton of CO_2 from a regulated source, as issued by a participating state. Regulated power plants can use a CO_2 allowance issued by any participating state to demonstrate compliance in any state. They may acquire allowances by purchasing them at the regional auctions, or through secondary markets.

The proposed amendments to 310 CMR 7.70 would implement the program changes contained in the RGGI Updated Model Rule[1] and RGGI 2016 Program Review: Principles to Accompany Model Rule Amendments.[2] The purpose of the RGGI Updated Model Rule is to serve as a template for each of the participating states to propose similar amendments to existing CO_2 Budget Trading Programs. The changes contained in the RGGI Updated Model Rule were agreed to by the nine RGGI participating states after the 2016 Program Review.

The proposed amendments include:

- A reduction in the regional CO_2 budget (the RGGI cap) for the years 2021 through 2030. The total regional cap begins at 75,147,784 tons of CO_2 in 2021, and will decline by 2.275 million tons of CO_2 per year thereafter through 2030, resulting in a total 30% reduction in the regional cap from 2020 to 2030. The 2021 -2030 cap continues the downward trajectory of the existing cap, and will also align the cap more closely with current emissions trends;
- Adjustments to the RGGI cap in the years 2021-2025 to account for the private bank of allowances as determined at the end of 2020;
- Modifications to the existing Cost Containment Reserve (CCR). The size of the CCR will be reduced, and the trigger price for the CCR will be raised. The CCR is designed to mitigate price spikes should they occur by providing for auction of a limited quantity of allowances in addition to the cap if established price thresholds are exceeded;

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1 https://rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/Model_Rule_2017_12_19.pdf
2 https://rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/Principles_Accompanying_Model_Rule.pdf

- The establishment of an emissions containment reserve (ECR). The ECR is a quantity of allowances that may be withheld from the auction to secure additional emission reductions if prices fall below established trigger prices;
- Updates to the RGGI offsets program, including the elimination of the provisions for Massachusetts to approve offset projects. Massachusetts will still accept offsets approved by other participating states;
- The Massachusetts Base Budget reflects a voluntary transfer of MA allowances to RI in each year beginning in 2018. This transfer reduces Massachusetts' portion of the regional emissions cap from 16.14 percent to 15.91 percent. The transfer is intended to adjust the apportionment of the regional cap to reflect the changes in the generating capacity and resulting emissions that have occurred in Rhode Island since the original apportionment was completed circa 2005. Note that the first and second control period adjustments to the Massachusetts base budget (to account for the private bank of allowances) and the CCR for Massachusetts through 2020 were, and continue to be, based upon 16.14 percent; and
- Numerous administrative updates and technical corrections.

II. BACKGROUND

The RGGI Program is an ongoing effort among Northeast and Mid-Atlantic States to develop and implement a regional CO_2 cap-and-trade program aimed at reducing CO_2 emissions from large fossil-fuel-fired electricity generating units in the region. Each of the RGGI participating states has a similar regulation to implement the RGGI program in its state. The individual state RGGI regulations are crafted based on a common template, the RGGI Model Rule.

In Massachusetts, the RGGI program is implemented through two sets of interrelated regulations; 310 CMR 7.70 - The Massachusetts CO_2 Budget Trading Program implemented by MassDEP, and 225 CMR 13.00 - DOER CO_2 Budget Trading Program Auction Regulation implemented by the Massachusetts Department of Energy Resources (DOER). The regulation at 310 CMR 7.70 establishes a compliance obligation on fossil fuel fired electricity generating units (EGUs) in the Commonwealth greater than 25 megawatts in size. This regulation requires EGUs to account for and reduce their CO_2 emissions.

When the program was originally established in 2005, a Memorandum of Understanding (MOU) among the states was developed which outlined the RGGI program elements including:

- The level of the regional emissions cap;
- The apportionment of each of the seven state's portion of the regional cap;
- The schedule for reductions in the cap out through the year 2018; and
- A three year compliance period.

On January 18, 2007, Massachusetts signed the RGGI Memorandum of Understanding (MOU),[3] committing the Commonwealth to propose a CO_2 cap-and-trade program substantially as reflected in the RGGI Model Rule. [4]

In January of 2008, MassDEP promulgated 310 CMR 7.70[5] - The Massachusetts CO_2 Budget Trading Program. The regulations at 310 CMR 7.70 established the rules for implementing the RGGI cap and trade program within the Commonwealth.[6] In July of 2008, the Massachusetts Green Communities Act[7] (GCA), Chapter 169 of the Acts of 2008 was signed into law. Chapter 169, Section 22 (b) (M.G.L. c. 21A, § 22) affirmed MassDEP's legislative authority to participate in RGGI and adopt cap and trade program regulations to implement RGGI.

The RGGI program was launched in 2009. The regional emissions cap in 2009 was 165 million tons of CO_2. Massachusetts portion of the regional emissions cap was approximately 16 percent of the regional cap. Under the RGGI program, Massachusetts committed to auction nearly 100 percent of its CO_2 allowances. Procedures for auctioning allowances are governed by regulations promulgated by the Department of Energy Resources (DOER) at 225 CMR 13.00.[8]

In 2009, the participating states committed to ongoing program monitoring and a comprehensive program review in 2012.[9] Between September of 2010 and January of 2013 the RGGI participating states conducted the first program review (the 2012 Program Review). As a result of that first program review, the participating states adopted amendments to their RGGI regulations to implement a number of program changes. The amendments became effective in 2014. The changes implemented in 2014 included:

- A significant reduction in the regional cap for the years 2014 -2020. The 2014 regional emissions cap was reduced from 165 million tons to 91 million tons, and a 2.5% per year reduction was applied for the years 2015 through 2020;
- Bank adjustments to account for the private bank of allowances;
- The addition of a Cost Containment Reserve;
- The addition of interim control periods for the first two years of each three year control period (including a compliance obligation for 50% of emissions in each interim control period); and
- Changes to the Offset provisions.

As part of the 2012 Program Review, the participating states also committed to a commencing second comprehensive program review no later than 2016 to consider program successes and

[3] http://rggi.org/agreement.htm
[4] http://rggi.org
[5] http://www.mass.gov/dep/service/regulations/rggiregf.pdf
[6] For more information on the adoption of the RGGI program go to http://www.mass.gov/dep/service/regulations/regsarch.htm
[7] http://www.malegislature.gov/Laws/SessionLaws/Acts/2008/Chapter169
[8] http://www.mass.gov/eea/docs/doer/rggi-auction-reg-final.pdf
[9] See, http://rggi.org/docs/mou_final_12_20_05.pdf

impacts, potential additional reductions to the cap post-2020, and other program design elements.[10]

In 2015, the participating states began to prepare for the second comprehensive program review. Between November of 2015 and September of 2017, the participating states convened nine stakeholder meetings and webinars to receive input on the results of the program review and the proposed amendments to the model rule. These sessions were well attended and helpful comments were received. The states received extensive feedback from environmental groups, retail electricity suppliers, power generation companies, and consultants. All documents from the stakeholder process can be found at: https://www.rggi.org/

As part of the 2016 program review, the RGGI states conducted extensive air emissions modeling and customer bill analysis, to determine the appropriate level of the cap for the 2021-2030 timeframe that would achieve a significant reduction in GHG emissions, but not cause a significant negative financial effect on ratepayers.

Findings of the second RGGI program review:

- The Cost Containment Reserve (CCR) had been triggered on two occasions, in 2014 and 2015, at times when a significant private bank of allowances (allowances in excess of the quantity necessary to surrender for compliance) already existed;
- After the significant cap reduction made as a result of the 2012 Program Review, actual emission levels in all years continue to trend below the level of the cap;
- The bank adjustments to the regional cap implemented as part of the 2012 Program Review will likely not be sufficient to balance the supply and demand of allowances due to the additional allowances injected from the CCR and the trend of actual emission levels less than the cap;
- The offset provisions in the Model Rule have not been significantly utilized;
- Each of the RGGI states have made longer-term (to 2030 and in most cases also to 2050) commitments for economy-wide greenhouse gas emission reductions;
- Additional reductions from the electric sector will be instrumental to achieving economy-wide reductions as the transportation and space heating sectors electrify to meet greenhouse gas emission reductions in those sectors; and
- Complementary energy policies implemented by the states are and will continue to be significant drivers of emission reductions of CO_2 and criteria pollutants (e.g., sulfur dioxide, particulate matter, oxides of nitrogen, and volatile organic compounds).

As a result of these findings, the participating states have issued an Updated Model Rule,[11] and each state has committed to propose amendments to their respective CO_2 Budget Trading Program that are substantially consistent with that Updated Model Rule. As was the case during the original development of the RGGI program and the first program review, the Updated Model

[10] See, http://rggi.org/docs/ProgramReview/_FinalProgramReviewMaterials/Recommendations_Summary.pdf

[11] See, http://rggi.org/docs/ProgramReview/2017/12-19-17/Model_Rule_2017_12_19.pdf

Rule is intended to provide participating states with the framework to take individual state statutory and/or regulatory action to implement the RGGI regional program consistently across the region.

The RGGI Program changes reflected in the Updated Model Rule are detailed in Section III of this document.

III. DESCRIPTION OF THE PROPOSED AMENDMENTS TO THE MASSACHUSETTS CO_2 BUDGET TRADING PROGRAM REGULATION

A. Size and Structure of the Regional Cap and Massachusetts State Budget

Starting in 2021, the regional emissions cap will be 75,147,784 tons and will decline by 2.275 million tons of CO_2 per year thereafter, resulting in a total 30% reduction in the regional cap from 2020 to 2030. During program review, the participating states conducted electric system modeling and macroeconomic analysis for a number of proposed cap levels and key program design elements. The regional cap of 75 million tons of CO_2 beginning in 2021 and then reduced by 2.275 million tons of CO_2 per year thereafter through 2030, continues the downward trajectory of the existing cap. Analysis indicated the overall regional economic impacts resulting from the 75 million ton cap were slightly positive, while customer bill impact analysis indicated that the resulting customer bill impacts for all classes of customers were modest.

Starting in 2018, Massachusetts' portion of the regional emissions cap of 82 million tons of CO_2 is approximately 15.91 percent.[12] The proposed base budgets will extend the current base budgets in the existing regulation to cover the period 2021 through 2030. Therefore, MassDEP is proposing the following Massachusetts CO_2 Trading Program base budgets by year:

- 2018 13,083,422 tons
- 2019 12,756,336 tons
- 2020 12,437,677 tons
- 2021 11,956,012 tons
- 2022 11,594,060 tons
- 2023 11,232,107 tons
- 2024 10,870,155 tons
- 2025 10,508,202 tons
- 2026 10,146,250 tons
- 2027 9,784,297 tons
- 2028 9,422,345 tons
- 2029 9,060,392 tons
- 2030 8,698,440 tons
- 2031 will be established through amendments following future program review.

[12] The base budgets reflect a voluntary transfer of allowances in each year to RI reducing Massachusetts' portion of the regional emissions cap from 16.14 percent to 15.91 percent.

B. Budget Adjustments

As part of the determination of the proposed RGGI regional emissions cap for the years 2021 through 2030, the RGGI states considered the number of banked allowances that will be in circulation at the end of 2020 and adjusted the cap accordingly. These allowances represent excess allowances (more than the total quantity of allowances necessary for all sources regulated under the program to demonstrate compliance). As was done as a result of the first program review, MassDEP is proposing amendments that will adjust downward the regional emissions cap, and the Massachusetts CO_2 Budget Trading Program base budgets, to account for the privately banked allowances that are in addition to the total quantity of CO_2 emissions emitted from all budget sources in all the participating states from program inception in 2009 through 2020. To accomplish this goal, MassDEP (and the other RGGI states) are proposing to add the following adjustments to the RGGI program:

- The Third Adjustment for Banked Allowances[13] adjusts the Massachusetts CO_2 Budget Trading Program base budget to account for Massachusetts' share of 100 percent of the regional private bank of allowances (vintages 2009 through 2020) held by market participants as of the end of 2020, which are in addition to the total quantity of emissions during 2009 through 2020. This adjustment to the RGGI region is expected to be approximately 45 million tons, and is dependent upon the quantity of actual regional emissions between now and 2020 relative to the regional cap. The quantity of third adjustment will be determined by January 15, 2021. The adjustment will be made over the five year period 2021 through 2025.

MassDEP is proposing the budget adjustment provision to account for the existing privately banked excess allowances. The adjustments will be made over a five year period to provide market participants with ample notice of the intent to adjust for these allowances, while realigning the long term supply of allowances with the projected emission quantities for that period (projected by the electric system modeling).

C. Cost Containment Reserve

MassDEP is proposing to modify the existing cost containment reserve (CCR) by changing the size of the CCR and the CCR trigger price.[14] Currently, the annual regional limit on CCR allowances is a fixed quantity of 10,000,000 allowances, in addition to the cap, that are held in reserve, and only made available for sale if allowance prices exceed predefined price levels. The CCR is populated with CO_2 CCR allowances from each of the participating states in a proportion equal to each state's respective portion of the overall regional emissions budget (the regional cap). CCR allowances are created in the CO_2 Allowance Tracking System (COATS) by

[13] The 2012 program review included two adjustments to account for the private bank of allowances in circulation at that time; the first control period adjustment (for program years 2009 – 2011) for banked allowances, and the second control period adjustment (for program years 2012-2014) for banked allowances.
[14] Massachusetts DOER is concurrently proposing amendments to its CO_2 Budget Trading Program Auction Regulation to change the size of the CCR and the CCR trigger price. (Add link to DOER's proposed amendments).

MassDEP. After the CCR allowances are originated, MassDEP transfers the CO_2 CCR allowances within COATS into the Massachusetts Auction Account for DOER to sell at auction.

Summary of proposed CCR provisions:

- MassDEP and the other participating states are proposing to move away from the fixed quantity annual limit on CCR allowances to the Model Rule's suggested annual CCR allowance limit of 10% of the each state's base budget beginning in 2021 and each succeeding year thereafter.
- CCR Allowances are currently and will remain fully fungible.
- The CCR allowances will only be made available in any auction when demand for allowances at prices above the CCR trigger price listed in DOER's Auction regulations (225 CMR 13.00) exceeds the supply of allowances offered for sale in that auction prior to the addition of any CCR allowances.
- If the CCR is triggered in any auction, DOER will sell CCR allowances at or above the CCR trigger price, in a quantity up to the annual limit on CCR allowances. In any auction in which the CCR is triggered, additional allowances will be offered for sale in a quantity which either: 1) reduces the auction clearing price to the CCR Trigger Price, or 2) until the annual limit on CCR allowances quantity is reached, at which point the auction could clear greater than the CCR Trigger Price.
- The CCR Trigger Price will be $13.00 in 2021 and will rise at 7% per year, so that the CCR allowances will only be released if emission reduction costs are higher than the CCR trigger price.
- The CCR size and CCR Trigger Prices are intended to balance cost control (mitigation of short term price spikes) and the overall environmental integrity of the regional emissions cap.
- At the end of the calendar year, MassDEP will calculate the number of unsold CO_2 CCR allowances that remain in the Massachusetts Auction Account. Unsold CO_2 CCR allowances equal to or less than the CCR annual size limit for the following year will be converted into CO_2 CCR allowances for the following year. If the amount of unsold CO_2 CCR allowances in the Auction Account at the end of any year is below the annual CCR allowance limit for the following year, then in the following year, MassDEP will originate new CO_2 CCR allowances to make up the difference. If the amount of unsold CO_2 CCR allowances in the Auction Account at the end of any year is greater than the annual CCR allowance limit for the following year, then MassDEP will transfer any unsold CO_2 CCR allowances in excess of the CCR annual size limit for the following year from the Massachusetts Auction Account into the Cost Containment Reserve Retirement Account established in the CO_2 Allowance Tracking System (COATS). Those CO_2 CCR allowances will not be reoffered for sale, but instead will be retired.

DOER intends to simultaneously propose amendments to the CCR size and trigger price in 225 CMR 13.00, the CO_2 Budget Trading Program Auction regulations to be consistent with the MassDEP CO_2 Budget Trading Program Auction regulations 310 CMR 7.70.

D. Emissions Containment Reserve

In response to the 2016 RGGI program Review and consistent with the Model Rule, MassDEP is proposing the creation and use of an emissions containment reserve (ECR) that will provide flexibility and emissions containment for the program. The ECR will respond to supply and demand in the market if emission reduction costs are lower than projected. If prices of CO_2 allowances fall below established ECR trigger prices, then Massachusetts, along with most of the other participating states, will withhold CO_2 allowances from the auction to secure additional emissions reductions. At this time, Maine and New Hampshire do not intend to implement an ECR. The impact of Maine and New Hampshire not implementing the ECR will mean the total maximum number of allowances withheld if the ECR is triggered will be slightly less than 10% of the total regional budget (the regional cap). Allowances withheld in this way will not be reoffered for sale, and will be transferred within COATS from the Massachusetts Auction Account into the ERC Allowance Retirement Account.

Summary of proposed ECR provisions:

- MassDEP is proposing to include in its regulation the Model Rule's suggested annual ECR allowance withholding limit of 10% of its base budget.
- CO_2 Allowances in a quantity up to the annual limit on ECR allowances will be withheld by DOER from any auction in which demand for allowances would result in an interim clearing price below the ECR trigger price. The interim clearing price is the calculated clearing price prior to the withholding of any ECR allowances.
- If the ECR is triggered in any auction, DOER will withhold ECR allowances at or below the ECR trigger price, in a quantity up to the annual limit on CCR allowances. In any auction in which the ECR is triggered, allowances will be withheld from sale in a quantity that either: 1) increases the auction clearing price to the ECR Trigger Price, or 2) until the annual limit on ECR allowances quantity is reached, at which point the auction could clear less than the ECR Trigger Price, but not less than the minimum reserve price.
- The ECR trigger price will be $6.00 in 2021, and rise at 7% per year, so that the ECR will only trigger if emission reduction costs are lower than the ECR trigger price.
- The ECR size and ECR Trigger Prices are intended to balance cost and the overall environmental integrity of the regional emissions cap.
- CO_2 Allowances withheld by DOER from sale at auction will be transferred by MassDEP from the Massachusetts Auction Account into the Emission Containment Reserve Retirement Account established in COATS. Those CO_2 CCR allowances will not be reoffered for sale, but instead will be retired.

DOER intends to simultaneously propose the establishment of the ECR, the size of the ECR and ECR trigger price in 225 CMR 13.00, the CO_2 Budget Trading Program Auction Regulations to be consistent with the MassDEP CO_2 Budget Trading Program.

E. Offset Allowances

MassDEP is proposing to remove the offset creation provisions from its CO_2 Budget Trading Program.

There are currently five offset categories in the RGGI program:

- Landfill methane capture and destruction,
- Reduction in emission of sulfur hexafluoride (SF_6),
- Sequestration of carbon due to reforestation, improved forest management, or avoided conversion,
- Reduction or avoidance of CO_2 emissions from natural gas, oil, propane end use combustion due to end use energy efficiency, and
- Avoided methane emissions from agricultural manure management operations.

As part of the 2016 RGGI Program Review, all of the RGGI participating states agreed to eliminate two of the five offset categories: Reduction in emissions of SF_6[15] (SF_6 is a gas which is primarily used in electric distribution systems as a coolant), and Reduction or avoidance of CO_2 emissions from natural gas, oil, propane end use combustion due to end use energy efficiency.

Rather than just eliminate two of the offset categories, MassDEP is proposing to eliminate all of the offset provisions because to date there have been no offset applications submitted in Massachusetts. MassDEP believes it is unlikely any offset applications will be applied for in Massachusetts in the foreseeable future. This is a function of the costs project proponents must incur to apply for, monitor, and verify offset project reductions relative to the value of offset allowances potentially obtained.

In addition, maintaining the ability for MassDEP to review offset applications, and applications for the approval of offset project verifiers is a significant administrative burden to the agency.

MassDEP proposes to continue to accept for compliance deduction, offset allowances approved by other participating states, subject to the 3.3 percent of a facility's total compliance obligation limitation.

F. Miscellaneous

The existing Massachusetts CO_2 Budget Trading Program rule included provisions for a Greenhouse Gas Credit Exchange Set-aside. MassDEP is proposing to remove these provisions since the window of time to exchange credits for allowances has expired.

MassDEP proposes to update documents that are incorporated by reference in the existing Massachusetts CO_2 Budget Trading Program rule.

Lastly, MassDEP proposes to make other technical changes and corrections to the existing Massachusetts CO_2 Budget Trading Program rule to correct typographical errors, make the regulations clearer, and improve consistency with the Model Rule.

[15] In 2017 MassDEP adopted 310 CMR 70.73, which is intended to reduce SF_6 emissions in Massachusetts. Therefore, projects could no longer qualify for Offsets.

VI. IMPACTS OF THE PROPOSED AMENDMENTS

Economic Impacts

The RGGI participating states utilized electric sector modeling and economic modeling to show the proposed changes to the program would have slightly positive economic impacts[16] over the 2021-2030 decade at the nine state regional level and at the state level in Massachusetts.

IPM modeling results, REMI modeling results, and customer bills analysis results are available at the RGGI Website at:
https://rggi.org/program-overview-and-design/program-review

Impacts on Massachusetts Municipalities

Pursuant to Executive Order 145, state agencies must assess the fiscal impact of new regulations on the Commonwealth's municipalities. The proposed regulations will not negatively affect cities or towns. While the four communities that own electric power plants would be subject to the regulation and incur the cost of CO_2 allowances as part of their operating costs, many municipalities throughout the Commonwealth will benefit from investment in energy efficiency measures funded partly through RGGI auction proceeds through the Green Communities[17] program. Furthermore, MassDEP notes that ownership and operation of a power plant, which municipalities may voluntarily undertake, is not a mandated municipal service. Therefore, costs associated with operation of a power plant are not mandated costs subject to the restrictions of Proposition 2 ½. M.G.L. c. 29, § 27 C(a) (which requires the state to reimburse municipalities for the costs incurred as a consequence of new state laws and regulations if associated with mandated municipal services.) [18]

Massachusetts Environmental Policy Act (MEPA)

Pursuant to 301 CMR 11.03(12) (MEPA Regulations), these proposed regulations will not reduce standards for environmental protection, opportunities for public participation in permitting or other review processes, or public access to information generated or provided in accordance with these regulations. Promulgation of these regulations, therefore, does not require the filing of an Environmental Notification Form under MEPA.

V. PUBLIC HEARING AND COMMENT

[16] Positive economic metrics included: cumulative change in Gross State Product, cumulative change in employment, and cumulative change in real personal income. See https://rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/REMI_2017_12_19.pdf for additional economic results detail.

[17] http://www.mass.gov/eea/energy-utilities-clean-tech/green-communities/

[18] *See* Town of Norfolk v. Department of Environmental Quality Engineering, 407 Mass 233 (1990). Note that incidental administrative costs impacts are also not eligible for reimbursement under M.G.L. c. 29, § 27 C(a).

MassDEP will hold public hearings on the proposed amendments in accordance with M.G.L. Chapter 30A and will publish notice of the hearings and comment period at least 30 days before the public hearings. MassDEP will accept written comments for 10 days after the hearing. The public hearing notice, proposed regulations and background document will be available on MassDEP's website at: www.mass.gov/dep/public/publiche.htm.

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